

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

KEITH TAYLOR BROOKS,

Plaintiff,

v.

A. SURFACE,

Defendant.

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No. 1:18-CV-152 NCC

MEMORANDUM AND ORDER

This matter is before the Court for review pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. Review of the record indicates that defendant A. Surface has not been served with process.

Plaintiff commenced this action in this Court on June 19, 2018, and filed an Amended Complaint on August 6, 2018. In both, plaintiff named A. Surface as a defendant. On January 29, 2019, the Court directed the Clerk to serve process on the complaint. The Clerk attempted to serve process upon A. Surface; however, Captain Mulcahy at Cape Girardeau County Jail declined to accept service of process as to A. Surface on February 6, 2019 because defendant Surface is no longer employed there. Captain Mulcahy indicated that defendant's location is currently unknown.

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 90 days after the complaint is filed, the court -- on motion or on its own after notice to the plaintiff -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In the case at bar, it has been more than 90 days since plaintiff filed his amended complaint naming A. Surface as a defendant, and the Court has attempted service on defendant

without success. Additionally, the Court has been unable to ascertain defendant Surface's current known address.

As noted above, Rule 4(m) of the Federal Rules of Civil Procedure provides that the Court, after notice to a plaintiff, shall dismiss an action against any defendant upon whom service has not been timely made. In light of plaintiff's status as a *pro se* and *in forma pauperis* litigant, he will be given the opportunity to provide the Court with adequate information such that A. Surface may be timely served under Rule 4(m). Plaintiff's response to the Court is due no later than thirty (30) days from the date of this Order.

Accordingly,

IT IS HEREBY ORDERED that, no later than thirty (30) days from the date of this Order, plaintiff shall provide the Court with adequate information such that A. Surface may be served with process.

IT IS FURTHER ORDERED that, in the absence of good cause shown, plaintiff's failure to timely respond to this Order shall result in the dismissal of this action, without prejudice, pursuant to Rule 4(m) of the Federal Rules of Civil Procedure.

Dated this 20th day of March, 2019.

_____/s/ Noelle C. Collins_____
NOELLE C. COLLINS
UNITED STATES MAGISTRATE JUDGE